IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

OP.No. 14832 of 2003(N)

PETITIONERS:
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1. **K.S.E.BOARD, VYDHUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM, REPRESENTED BY ITS SECRETARY.**

2. **THE ASSISTANT EXECUTIVE ENGINEER, K.S.E.B., ELECTRICAL MAJOR SECTION, BEYPORE.**

3. **DEPUTY CHIEF ENGINEER, ELECTRICAL CIRCLE GANDHI ROAD, KOZHIKODE.**

4. **CHAIRMAN, K.S.E.B., VYDHUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM**

BY ADV. SRI.P.SANTHALINGAM, SC, KSEB
SRI.C.K.KARUNAKARAN, SC FOR KSEB

RESPONDENTS:
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1. **DEPUTY LABOUR COMMISSIONER (AUTHORITY UNDER THE KERALA PAYMENT OF SUBSISTENCE ALLOWANCE ACT, 1972), KOZHIKODE.**

2. **LABOUR OFFICER, KOZHIKODE.**

3. **STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, LABOUR DEPARTMENT, SECRETARIATE, THIRUVANANTHAPURAM**

4. **M.SUNDARAN S/O. LATE M. CHANDU, MANGANTHARA HOUSE, NORTH BEYPORE P.O., KOZHIKODE DISTRICT.**

BY ADV. SRI.JACOB ABRAHAM
GOVERNMENT PLEADER SMT.SMITHA SUKUMAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 05/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.14832/2003

ORDER ON IA. NO.8181/2003 IN OP. NO.14832/2003

DISMISSED

05.11.2007 SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE INTIMATION DT. 29.1.2000 SENT BY THE VIGILANCE DEPARTMENT.

EXT.P2:- COPY OF THE ORDER NO.BSI/1297/59 DT. 12.1.60 DT.10.11.59.

EXT.P3:- COPY OF THE BO NO.EBII-2780/75 DT. 25.2.77.

EXT.P4:- COPY OF THE POWERS DELEGATED TO ASSISTANT ENGINEERS.

EXT.P5:- COPY OF THE PETITION FILED BY THE 4TH RESPONDENT BEFORE THE FIRST RESPONDENT IN OCTOBER, 2000.

EXT.P6:- COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONERS HEREIN IN FEBRUARY, 2001.

EXT.P7:- COPY OF THE ARGUMENT NOTE FILED IN APRIL, 2001.

EXT.P8:- COPY OF THE ORDER OF THE IST RESPONDENT DT. 12.7.01.

EXT.P9(a):- COPY OF THE SHOW CAUSE NOTICE DT. 29.9.01 OF THE IST RESPONDENT.

EXT.P9(b):- COPY OF THE ORDER OF THE 1ST RESPONDENT DT. 31.1.2002.

EXT.P9(c):- COPY OF THE DEMAND NOTICE NO M2 845/02 ISSUED BY THE DY. TAHSILDAR (RR), THIRUVANANTHAPURAM.

EXT.P9(d):- COPY OF THE SHOW CAUSE NOTICE DT. 24.4.02 OF THE 1ST RESPONDENT.

EXT.P10:- COPY OF THE B.O. NO.2627/97/TC2(B) 1071/96, THIRUVANANTHAPURAM, DT. 26.11.97.

/TRUE COPY/

P.A. TO JUDGE

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THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.14832 OF 2003

Dated this the 5th day of November, 2007

JUDGMENT

This writ petition is filed by the Kerala State Electricity Board essentially raising a question as to whether Assistant Engineers are covered by the provisions of the Kerala Payment of Subsistence Allowance Act, 1972. That issue would depend upon the nature of duties and responsibilities discharged by the Assistant Engineers. Ext.P10 is the Board order regarding distribution of business and duties and responsibilities to the various officers of the Board, including Assistant Engineers. The question whether the Assistant Engineers are involved mainly in works of managerial or administrative capacity is one of the essential ingredients to be decided for determining as to whether they would be covered by the provisions of the Subsistence Allowance Act. It is also pointed out by the counsel for the contesting private respondents that the Board, as a matter of fact, complied with some of the orders issued under the Subsistence Allowance Act.

2. Noticing the aforesaid, it is the requirement that Ext.P10 gains the attention of the statutory authorities and a decision has to be rendered on the basis of the duties and responsibilities as per Ext.P10 and any further material that may be relevant to decide as to whether Assistant Engineers are entitled to the benefit of the Subsistence Allowance Act.

For the aforesaid reasons, the impugned Ext.P8 is set aside and the Deputy Labour Commissioner is directed to take up S.A.C.No.6/00 and decide the matter in accordance with law, having regard to what is stated above and after giving the K.S.E.Board opportunity to place Ext.P10 and any other materials that may be relevant for consideration. The private respondents would also be afforded sufficient opportunity to place further materials. A decision, after hearing the parties, shall be rendered within a period of four months from the date of receipt of a copy of this judgment.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.14832 OF 2003

JUDGMENT

5TH NOVEMBER, 2007.

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